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AR-TI RECORDING, INC.
223 JERICHO TURNPIKE
MINEOLA, NEW YORK 11501

Duane Marine Corporation

July 20, 1981

PENGAD CO., BAYONNE N.J. 07002

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3 In the Matter of:

4 THE DUANE MARINE CORPORATION

Docket Number: G.W.II-79-66

5 PERTH AMBOY, NEW JERSEY

6

7 General Services Administration
8 26 Federal Plaza, Room 437 E
9 New York, New York

10 Monday, July 20, 1981

11 The above-entitled matter came on for hearing
12 pursuant to notice, at 11:11 a.m.

13

14 BEFORE:

15

16 PAUL BERMINGHAM, Hearing Officer

17

18 APPEARANCES:

19

20 Henry Gluckstein, Esq.
E.P.A. Water Enforcement Branch
26 Federal Plaza
New York, New York

21

22 Michael V. Polito, Field Inspector
U.S.E.P.A., Region 2
Hazardous Waste Division
Edison, New Jersey 08817

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24

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1 **I N D E X**

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2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Michael Polito				
4	By Mr. Gluckstern	4			
5					
6					
7					
8	<u>E.P.A. EXHIBITS</u>		<u>FOR IDENTIFICATION</u>		<u>IN EVIDENCE</u>
9	No. 1			4	
10	No. 2			4	
11	No. 3			7	
12	No. 4			10	
13	No. 5			14	
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15	No. 7			21	
16	No. 8			22	
17	No. 9			22	
18	No. 10			27	
19	No. 11			29	
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21	No. 13			43	
22	No. 14			45	
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1 PROCEEDINGS

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2 (11:11 a.m.)

3 MR. BIRMINGHAM: I don't have a copy of the com-
4 plaint, so why don't you make the opening statement just to
5 identify what the proceeding is about.

6 MR. GLUCKSTERN: This is a proceeding pursuant to
7 Section 311 J 1-C of The Clean Water Act concerning a viola-
8 tion of the Spill Prevention of Oil Pollution Prevention
9 Regulations at 40 C.F.R., Part 112.

10 This hearing is held as an undefended hearing with
11 no appearance by the respondents and is for the purposes of
12 establishing a record underwhich the E.P.A. Hearing Officer
13 can establish the assessment of penalty which E.P.A. assessed
14 in its Notice of Violation at \$10,000. The Hearing Officer,
15 based on the record established today, has the prerogative to
16 assess a penalty of anywhere from zero dollars to in excess
17 of the amount initially requested in the Notice of Violation
18 \$10,000.

19 I have a document which I would like marked for
20 identification as E.P.A. 1. This represents the true copy
21 of the Notice of Violation and assessment of civil penalty
22 which was served on a respondent and I have a one-page docu-
23 ment which I would like marked as E.P.A. 2 which represents
24 an acknowledgment by the president of the respondent corpora-
25 tion of the corporation's receipt on the 20th of December 1979.

of the notice of violation and is to this violation that this
 proceeding/pollution/concerning
 (E.P.A. Exhibit Nos. 1 and 2)
 were made for identification
 now I'd like the hearing officer to swear in
 E.P.A.'s witness, Mr. Michael Pollio.
 whom I'm hereupon,
 was called as witness by counsel for E.P.A. and, having
 been duly sworn by the hearing officer, was examined and
 testified as follows:

MICHAEL POLLIO

Q. Would you state your name please and spell it?
 A. I'm Michael D. Pollio, P-O-L-L-I-O.
 Q. And would you state your address?
 A. United States Environmental Protection Agency,
 Pollution, New Jersey 08837.

Q. Mr. Pollio, would you describe your responsibilities
 and activities as an employee now of the hazardous waste
 division and formerly as employee of the surveying and
 analysis division which respect to compliance under the solid
 pollution prevention regulations specifically?

A. I respect facilities and regulation what are called

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1 Polite/Direct

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2 spill prevention and compliance plans throughout the Region 2
3 area which includes New York, New Jersey, Puerto Rico and
4 The Virgin Islands for conformance to 40 C.F.R. 112. On the
5 basis of my compliance inspections, I review the facility and
6 their proposed or their presented SPCC plan for compliance
7 with those regulations and submit my findings to the Enforce-
8 ment Branch.

9 Q How long have you performed such duties for E.P.A.?

10 A Since early 1974.

11 Q Could you estimate the number of facilities, roughly,
12 that you have visited since that time in the capacity as an
13 inspector under the S.P.C.C. Regulations?

14 A I've been involved with easily a few hundred --
15 maybe two or three hundred different facilities under this
16 program.

17 Q Are you a professional engineer by training?

18 A No, I'm not.

19 Q What is your training?

20 A Academically, I attended graduate school and toward
21 my Masters which I did not complete. I had specific training
22 in the field of S.P.C.C. through special courses this agency
23 has provided and I've negotiated through on-the-job training,
24 as I say, hundreds of facilities sitting down with professional
25 engineers.

2 Q. What is it that gives you the ability then, not
3 being a professional engineer, to evaluate spill prevention
4 control and countermeasure plans and to evaluate compliance
5 with the regulations at a facility?

6 A. We've had selected training which is available no-
7 where in the United States provided by the United States
8 Protection Agency on spill prevention compliance and counter-
9 measure. I've been a part of hundreds of technical meetings
10 with professional engineers concerning requirements -- have
11 given counsel and advice to the same engineers and never been
12 challenged for the accuracy of my technical recommendations.
13 We do not do specific facility engineering, but I'll look at
14 the broad conceptual requirements and whether or not engineer-
15 ing should be done in aspects of the regulations.

16 Q. I would like to note to the Hearing Officer as a
17 matter of judicial notice that the regulations that 40 C.F.R.
18 Part 112 did not require preparation of spill prevention con-
19 trol and countermeasure plans by professional engineers, but
20 merely certification of plans that have been prepared by a
21 professional engineer.

22 As part of your duties as an S.P.C.O. Compliance
23 Inspector, did you have occasion to visit for an inspection a
24 facility owned and operated by the Duane Marine Corporation
25 and located at 26 Washington Street, Perth Amboy, New Jersey?

1 A Yes, I did.

2 Q Can you tell me when that was?

3 A It was in May of 1979.

4 Q With whom did you meet when you were at that facil-
5 ity?

6 A I met Mr. Lecarreaux who represented himself as the
7 owner of that facility -- owner and operator.

8 Q Did he accompany you on your tour of that facility?

9 A Yes, he did.

10 Q Were you accompanied by any other employees of
11 Duane Marine Corporation?

12 A Yes, I was.

13 Q Do you know who those were?

14 A I don't recall. One of the names I do recall is
15 Mr. Positivo, but I don't remember if he was present through
16 the entire inspection.

17 Mr. Elliot, also of our program, was present during
18 the inspection.

19 Q During this inspection that we're referring to, did
20 any employee of Duane Marine Corporation or officer of that cor-
21 poration have occasion to present to you with any documents?

22 A Yes, they did.

23 Q Let me have this first marked as E.P.A. 3.

24 (E.P.A. Exhibit No. 3 was
25 marked for identification)

2 Let me show you a multi-page document marked for
3 identification as E.P.A. 3 and ask you if you can identify
4 this document?

5 A This is a copy of the S.P.C.C. plan that was pre-
6 sented to me by Mr. Lecarreux of the Duane Marine Corporation.

7 Q I would move the Hearing Officer to enter into
8 evidence E.P.A. 1, 2 and 3.

9 MR. BIRMINGHAM: They will be accepted.

10 Q If you would keep this with you for a moment for
11 questioning. Could you describe your visit to the facility?

12 You verbally described what it was you saw.

13 A Yes. Well, I presented myself to Mr. Lecarreux
14 at the facility and then made a tour and I walked through the
15 entire facility for conformance to the requirements of 40 C.F.R.
16 112 and I saw many things -- I saw a large amount of drums
17 -- I would estimate from 4,000 to 7,000 being stored at the
18 facility. I saw that the facility was located immediately on
19 the banks of the Arthur Kill. I saw storage tanks. I saw
20 sheens of oil leaving the property. I saw uncontrolled facil-
21 ty drainage. I saw areas which I thought should be -- might
22 present spill hazards.

23 Q When you say you saw sheens of oil leaving the
24 property, does that mean that you actually observed a route
25 by which oil left the property and entered waters of the United

1 States?

2 A Yes, I did.

3 Q And was that particular sheen that entered waters
4 of the United States, in your opinion, attributable to the
5 failure of the facility to have implemented a proper spill
6 prevention control and countermeasure plan?

7 A Yes, it was.

8 Q Now, when you were at this facility you made certain
9 observations you've testified. Did you also -- well, let me
10 ask you: Is it the normal course of business at the what
11 was then at that time the Surveyance and Analysis Division
12 for a site inspector to prepare written memorializations of
13 their visits to facilities?

14 A Yes, and especially on a visit that was generated
15 by this type of public concern.

16 Q What concern was that?

17 A Both the township and the press were concerned about
18 the hazard of the storage of those large amounts of drums at
19 the facility which is in a both a commercial and residential
20 area of the City of Perth Amboy.

21 Q Were any of these drums somehow connected with the
22 or under the jurisdiction of the 40 C.F.R. Part 112 regulations?

23 A They could have been. Never was I able to receive
24 a manifest of what was in those drums or were any of the drums

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labeled.

Q Did you make specific inquiry to any of the employees or any of the officers of Duane Marine Corporation to determine whether any of these drums contained oil?

A Yes, he said some of them did.

Q "He" being whom?

A Mr. Lecarreux.

Q Now, you stated that you prepared a memorandum of the visit that you made to the facility.

I'd like this marked for identification as E.P.A. 4.

(E.P.A. Exhibit No. 4 was
marked for identification)

I show you a document consisting of a memorandum of three pages and four pages of attachments and ask you whether you can identify this?

A This is a copy of a memo I wrote to Mr. Fred Rubel, Chief of the Emergency Response Inspection Branch as the unit in which I am now working was known in which I memorialized my visit to the facility of May 14th.

Q You can keep this with you if you need to refer to it. Now, looking at the -- well, first I'd like this moved into evidence.

MR. BERMINGHAM: It will be accepted as E.P.A. Exhibit 4.

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2 THE WITNESS: Mr. Gluckstern, can I address -- as
3 I'm reviewing E.P.A. Exhibit number 3, which I identified as
4 the copy of the document presented to me, there's one page
5 that's not together in this Exhibit that we should -- that
6 I'd like to address.

7 MR. GLUCKSTERN: You're saying you're missing a page?

8 THE WITNESS: It appears to me we're missing a page.

9 MR. GLUCKSTERN: I see comparing the copy that I
10 have provided the hearing with the original copy in the pos-
11 session of Mr. Polito that a page is missing and it will be
12 attached or inserted into the document in evidence prior to
13 the conclusion of the hearing, if that's all right.

14 MR. BIRMINGHAM: (Nods)

15 BY MR. GLUCKSTERN:

16 Q Now, looking at the memorandum which is E.P.A. 4
17 and directing your attention to the third page of the memoran-
18 dum portion and the sixth paragraph. That paragraph speaks of
19 an agreement with Mr. Lecarreux that there would be a meeting
20 with him and his professional engineer to institute immediate
21 corrections to the plan and implementation of the plan -- is
22 that correct?

23 A Yes, that is correct.

24 Q Can you tell me what's the subsequent history of
25 those promises for meetings with the president of the corpora-

tion and a professional engineer were?

A Well, they're quite varied. In part, certain recommendations were made to him upon my visit of flaws in the implementation -- whatever the plan did state, the implementation of the facility -- in other words, regardless of the formal document, there were certain secondary containment in other construction requirements that would have been required at the facility to control spills of oil. These comments were made verbally to him.

Subsequent to this he did make contact with his engineer, but on the advice of counsel, we did not proceed with the hearings. It was -- it proceeding according to the terms of the standard method of handling S.P.C.C. cases within the Water Enforcement Branch.

Q During the site visit, did you convey verbally to Mr. Lecarreux the specific deficiencies that existed at the facility with respect to the S.P.C.C. plan?

A Some of them, yes.

Q Did he or his professional engineer contact you after that meeting to attempt to remedy the deficiencies?

A Yes.

Q Could you tell me how long a time transpired approximately before that contact?

A Well, I wrote him a letter asking him, among other

things, that I needed certain other information about the plan and he advised me that through this letter, he had made certain repair of cracks in the containment wall in 1978 which was something that was stated in the S.P.C.C. plan.

We had subsequent meetings in 1980 which we finally did meet with his professional engineer and which resulted in a submittal to me by his professional engineer of an amended plan based on my site inspection.

Q Are you saying then that in excess of half a year transpired before the company contacted you to commence its solution to the deficiencies of the plant?

A No, I'm not stating that, Mr. Gluckstern. I'm saying that the Water Enforcement Branch issued a Notice of Violation in December of -- or around late '79 -- and shortly after that the attorney who then received the handling of the case from the former attorney then authorized me to deal directly with the facility and in around May -- March or May of the next year, 1980, I did finally meet with this professional engineer and Mr. Lecarreux and we went over the facility.

Q I don't think this is yet clear on the record.

Did the company or its professional engineer approach you after your May 1979 -- I mean shortly after your May 1979 visit to solicit your assistance in remedying the deficiencies of the plant?

A The facility never solicited my assistance. If there was any approach made, it was made on the side of the federal government to urge him to bring his facility into compliance with the regulations.

Q But you were never provided with an amended plan, were you, within a half a year after the visit?

A No, I was not.

Q Now, you referred to a letter, you stated, that you wrote after your visit to the facility -- is that correct?

A Yes, I did.

Q I'd like this marked E.P.A. 5 for identification.

(E.P.A. Exhibit No. 5 was marked for identification)

I'm showing you E.P.A. 5 for identification and ask you whether you can identify that letter?

A This is a letter that I wrote to Mr. Lecarreux dated May 17, 1979 in which I asked for specific questions of Mr. Lecarreux.

Q I would like this letter moved as evidence.

MR. BIRMINGHAM: It will be accepted as E.P.A. Exhibit 5.

Q You've testified that during the site inspection, you were provided with an S.P.C.C. plan prepared in 1976 by the Duane Marine's professional engineer -- is that correct?

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2 A I was presented with a plan that was certified by
3 the professional engineer, yes.
4

5 Q Subsequent to your visit to the site did you have
6 occasion to review that S.P.C.C. plan which had been provided
7 to you?

8 A Yes, I did.
9

10 Q I would like this marked for identification as E.P.A.
11 6
12 (E.P.A. Exhibit No. 6 was
13 marked for identification)

14 I show you E.P.A. 6 and ask you whether you can
15 identify this document?

16 A This is a copy of a memo I wrote to Richard Tisch,
17 Chief of the Water Enforcement Branch on my review of the
18 S.P.C.C. Plan of Duane Marine Corporation.

19 Q I move E.P.A. 6 into evidence.

20 MR. BIRMINGHAM: Accepted as E.P.A. Exhibit number 6.

21 Q Now, if you would look at E.P.A. 6, Mr. Polito, does
22 this memorandum summarize your evaluation of the S.P.C.C. plan
23 dated May 9, 1978?

24 A Yes, it does.

25 Q Do you have any further observations concerning that
plan that you would add to this memorandum?

A Based on subsequent visits to the facility, Mr.

1 Gluckstern?

2 Q No, just based on your evaluation at that time.

3 Is this memorandum complete?

4 A It's complete -- what is missing is I haven't put
5 a qualitative judgment on the degree of urgency that I look
6 at this facility. I felt the possibility of having spills at
7 this facility was very great because of the possibility of the
8 large amounts of oils that could move through this facility.
9 and its location being immediately on the banks of the Arthur
10 Kill and I was concerned about the oil that could spill from
11 the drums because of the large amounts of drums on the facility
12 that could create a catastrophic effect. That qualitative
13 judgment is missing from this memo, but in other respects it
14 reflects my impressions in review of the S.P.C.C. plan.

15 Q I won't examine you on the specific findings of this
16 memorandum since I believe it speaks for itself, but would you
17 summarize for the Hearing Officer these areas of the facility
18 which you thought gave the necessity of preparing a proper
19 plan in implementing some immediacy in this case?

20 A Yes, the drum storage area had no secondary contain-
21 ment. The truck loading and unloading area sat within 100 feet
22 of the street and if there were a spill of a tank truck which
23 would vary in size from 3,000 to 6,000 gallons, that spill
24 could go immediately out onto the street or through the plant

2 facility into the waters of the Arthur Kill. I could not
3 ascertain exactly what was in the drums because I could not
4 be provided with records of inspections called for in the
5 S.P.C. regulations. Below the truck unloading area was an
6 in-ground scale, but had never been addressed in the S.P.C.C.
7 plan as presented to me. The facility drainage which was the
8 most severe violation -- the land of the facility slopes, as
9 I say, immediately to the Arthur Kill and there was no attempt
10 to control the many operations that Mr. Lecarreux would con-
11 duct from his day-to-day business and which could change from
12 day-to-day in preventing spills from trucks or barrels into
13 the waters of the Arthur Kill.

14 Q Now, you speak of Mr. Lecarreux's day-to-day busi-
15 ness. Did you have occasion to be familiar with Mr. Lecar-
16 reux's business?

17 A Yes, one aspect of his business, yes.

18 Q Why is that?

19 A Mr. Lecarreux was in the oil spill clean-up business
20 and I have in the past even hired him to perform oil spill
21 clean-ups because I regarded him as aware of the hazards pre-
22 sented by oil spills and the knowledge of how to respond to
23 these spills.

24 Q How long were you in this capacity of working from
25 time-to-time with Mr. Lecarreux in the oil spill clean-up

2 business? How long were you associated with him in this
3 respect and familiar with his operations?

4 A Since 1974 to the present time.

5 Q And during your visit to the facility on the 13th of
6 May 1979 did you have occasion to observe actually any activi-
7 ty at the facility as far as movement of oil?

8 A Mr. Lecarreux identified to me that he had an oil/
9 water separator that he would take in oils from various sources
10 from clean-ups or as a secondary processing facility --
11 separate these oils for disposal.

12 Q Would you consider this a large oil storage facility
13 based on its capacity in gallons to store oil?

14 A Yes, I would consider it a large oil storage facility.

15 Q Could you direct your attention to E.P.A. 4, the
16 May 22, 1979 memorandum from you to Mr. Rubel --

17 A Yes.

18 Q -- and to the attachment indicated attachment 5.

19 A Yes.

20 Q Would you describe what this piece of paper is?

21 A This is a little plot diagram that I drew after my
22 visit to the Duane Marine facility.

23 Q For the purposes of the record, would you identify
24 those areas which are indicated by the numbers one through six
25 on this diagram?

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Yes. The area identified as number one was the major area in which drums were stored on the facility and immediately beneath number one or as part of number one I have indicated an incline which leads directly to the Arthur Kill which is the shore line of which the - - and by the shore line I mean the - - I've indicated as a high water mark by a dash line.

Area number two, again immediately adjacent to the Arthur Kill was an area in which more drums were stored.

Area number three was a diked area in which large amounts of oil were stored. At least one container there contained 250,000 gallons of oil -- had the capacity to store 350,000 gallons of oil.

Facility four was the area Mr. Lecarreaux described to me as the truck loading/unloading area.

Vehicular parking and equipment storage were in Areas 5 and 6 as on this diagram. You'll notice that I have no line drawn to the right of Areas 5 and 6. This means that there was no diking. These little lines meant that there was some type of curbing, but it doesn't speak of the adequacy of that curbing -- only that there was some curbing.

Q You stated a moment ago, I believe inadvertently, that Area 3 had the capacity to store 350 gallons of oil.

You didn't mean that, did you?

A No, what I said was or what I thought I said was the large circle in Area 3, I believe, was a tank of capacity 250,000 gallons. Then, there are little rectangular squares in there. These were other size tanks within that diked area. Part 1 of the S.P.C.C. plan -- page 2 or 3 identifies this large tank as a 250,000 gallon storage tank.

Q And would you just for a moment direct your attention to Attachment 4 of the memorandum that you are presently looking at which is the previous page -- to the square that you have superimposed on a map and would you tell me what that represents?

A This shows the location of the Duane Marine facility with reference to the City of Perth Amboy and to the navigable board of the United States.

Q And what does it show with reference to the orientation of the facility with respect to waters of the United States?

A It is immediately located adjacent to the navigable waters of the United States.

Q Thank you. You stated that on May 17th you addressed a letter to Mr. Lecarreux requesting further information needed to complete an S.P.C.C. evaluation -- Is that correct?

A That's correct.

Q I'd like this marked E.P.A.7 for identification.

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3 (E.P.A. Exhibit No. 7 was
4 marked for identification)

5 Mr. Polito, I show you a letter dated 5/June/1979
6 from a Mr. R. J. Coelhe, that's C-o-e-l-h-e, of Duane Marine
7 Corporation addressed to you and ask you whether you can
8 identify this?

9 A Yes, this was a letter received in reply to my
10 letter request of May 17, 1979.

11 Q I move this into evidence.

12 MR. BIRMINGHAM: Accepted as E.P.A. Exhibit number 7.

13 MR. GLUCKSTERN: With the failure on the part of the
14 defendant or his counsel to appear today, I have a document
15 which cannot immediately be sponsored, a letter of January 11,
16 1980 from Marvin J. Brauth, B-r-a-u-t-h, Esquire, at that time
17 representing the Respondent to me -- I'm sorry -- from me
18 to Mr. Brauth based on telephone conversations that had trans-
19 pired between me and the counsel for Duane Marine and this
20 particular letter reflects the availability of E.P.A. to meet
21 with the attorney and client in order to settle the Notice of
22 Violation and have an S.P.C.C. prepared. I would have this
23 marked as E.P.A. 8 for identification, and would request the
24 Hearing Officer to enter it into evidence. I will represent
25 this myself as being a true copy of an Agency document.

MR. BIRMINGHAM: It will be accepted.

2 MR. GLUCKSTERN: And it is being entered into the
3 record for purposes of establishing together with other docu-
4 ments already in evidence and which will be identified and
5 moved into evidence at a later time today the continuing
6 availability and solicitation on the part of E.P.A. toward
7 the Respondent to assist the Respondent in anyway in preparing
8 expeditiously and implementing expeditiously an S.P.G.C. plan
9 which solicitations and overtures were not reciprocated.

10 (E.P.A. Exhibit No. 8 was
11 marked for identification)

12 Did you have occasion to correspond with Mr. Lecar-
13 reaux sometime in March of 1980?

14 A Yes, I did.

15 Q I'd like this marked as E.P.A. 9 for identification.

16 (E.P.A. Exhibit No. 9 was
17 marked for identification)

18 I show you this one-page document and I ask you if
19 you can identify this?

20 A It's a letter dated March 12, 1980 which I wrote to
21 Mr. LeCarreux giving to him a copy of a report dated March 22,
22 1979 -- dated May 22, 1979 which has been entered into evidence
23 as E.P.A. Exhibit number 4 on the deficiencies of his S.P.G.C.
24 plan and, again, soliciting a meeting with him to work out
25 the deficiencies.

2 Q Is there any reason why this letter was written on
3 a particular date or month that it was written rather than
4 at some other time?

5 A Yes, because Mr. Gluckstern, you had asked me to
6 contact them and assist you in bringing this facility into
7 compliance with the S.P.C.C. regulations.

8 Q And previous to that time Mr. Lecarreaux had not
9 contacted you to arrange such meetings or had forwarded docu-
10 ments to you?

11 A No, the Water Enforcement Branch prior to this time
12 was handling it through their established procedure of issuing
13 a Notice of Violation and then formally identifying the Viola-
14 tion and then at that point we -- I would be advised to con-
15 tact the facility directly.

16 Q The attachment referenced in E.P.A. 9 for identifica-
17 tion -- I'm sorry -- that's in evidence -- EPA 9, is that
18 the same document that is presently E.P.A. 6 for identification
19 -- the memorandum reviewing the S.P.C.C. plan?

20 A Could you repeat the question please?

21 Q What document is this attachment that's referenced
22 here? Is this not in fact the memorandum that you wrote re-
23 viewing the S.P.C.C. plan and outlining deficiencies?

24 A Yes, it is.

25 Q And that is E.P.A. 6 in this proceeding -- is that

1
2 correct?

3 A Yes.

4 Q Thank you.

5 MR. BIRMINGHAM: It's E.P.A. 4, isn't it?

6 THE WITNESS: I'm sorry -- I did state 4. It is 6.
7 It's the deficiencies of the S.P.C.C. plan.

8 MR. GLUCKSTERN: There are two memoranda dated the
9 same date.

10 MR. BIRMINGHAM: All right.

11 MR. GLUCKSTERN: I want to clarify that for the
12 record.

13 BY MR. GLUCKSTERN:

14 Q Now, at sometime in April of 1980, did you have occa-
15 sion to summarize --

16 Let me withdraw that.

17 Did you have -- subsequent to your May 14, 1979
18 site visit, did you have occasion to re-visit the Duane Marine
19 facility?

20 A Could you repeat that please?

21 Q Subsequent to your May 1979 visit, did you have again
22 on some future occasion have the opportunity to visit the Duane
23 Marine facility?

24 A Yes, I did.

25 Q And when was that?

A Because Mr. Lecarreux was discharging the -- a portion of his water effluent to the Perth Amboy Sewage Treatment Plant as he represented he was, I arranged for Mr. Leon Lazarus of the N.P.D.E.S. program to visit the facility to make an evaluation of whether that facility is in compliance with the N.P.D.E.S. regulations.

Q And you accompanied him on that visit?

A I accompanied Mr. Lazarus.

Q Can you summarize the findings that you made on your subsequent visit approximately ten months after the initial visit with respect to compliance and implementation measures which had been taken at the facility and with respect to any additional findings you made at the second visit that you had not made at the first visit?

A Yes, I believe you're referring to the visit of Friday, March 26, 1980?

Q That's correct.

A Yes. I found that the general housekeeping had deteriorated since the last visit at Duane Marine. I observed new areas of storage that did not exist on my first visit were created -- these being tank trucks that were used solely for storage right immediately adjacent to the waters of the Arthur Kill. No secondary containment was provided this storage, nor was this storage addressed in the S.P.C.C. plan. I was advised

2 that three underground 2,000 gallon gasoline tanks which is
3 oil were put into the facility. This was not identified in
4 the S.P.C.C. plan. A new barrel storage area - - the barrel
5 storage area did not have adequate secondary containment as
6 was identified during my first visit. The loading/unloading
7 area did not have any adequate curbing around it as was ad-
8 dressed in my first visit. There were still drums on the
9 property. Still no manifest was available for these drums
10 and the exact count was still about 4,000, but could only be
11 estimated - - no direct count was had.

12 Q In your opinion had the Respondent made a good faith
13 effort to implement an S.P.C.C. plan subsequent to your first
14 visit - - in other words, between your first and second visits?

15 A He made a gesture which is far from being a good
16 faith effort.

17 Q And in what respect do you say he made a gesture?

18 A He indicated that he would have - -

19 (Pause)

20 Q Can you enumerate implementation which had taken
21 place during the period?

22 A Yes, I'm trying - - I was pausing to get a complete
23 recollection. Mr. Lecarreux had put up some temporary sand
24 diking around the barrel storage area - - it was completely
25 inadequate. In that respect he made some minor movement which

1 Polito/Direct

2 was hardly adequate. That's why I used the terminology
3 "gesture" in good faith compliance which has to solely be
4 taken in the context of the situation. Mr. Lecarreux was
5 a highly skilled person in the field of oil containment and
6 clean-up and worked from a seat of knowledge, not of ignorance.

7 Q. Was it your opinion that the implementation at this
8 facility reflected this knowledge that Mr. Lecarreux had?

9 A. The implementation at this facility displayed a dis-
10 regard for the knowledge which he had.

11 Q. As a result of your visits to the facility of March
12 28, 1980, did you have occasion to make a summary of your
13 findings?

14 A. Yes, I did.

15 Q. And in what form did they take?

16 A. I wrote a memo to Mr. Lecarreux.

17 Q. Did you transmit that memo to Mr. Lecarreux?

18 A. No, I did not.

19 Q. Can you tell me what was done with that memorandum?

20 A. I sent that memo to Mr. Gluckstern of the Water
21 Enforcement Branch.

22 Q. I'd like this marked as E.P.A.10 for identification.
23 (E.P.A. Exhibit No. 10 was
24 marked for identification)

25 Mr. Polito, I ask you whether you have seen this

2 document, E.P.A. 10 for identification?

3 A Yes, I did.

4 Q And other than the fact that this document is not
5 signed by you, is this document substantively in its content,
6 in fact, a retyping of the memorandum that you had written?

7 A Yes, it is.

8 Q I move E.P.A. 10 into evidence.

9 MR. BIRMINGHAM: Accepted as E.P.A. Exhibit 10.
10 I assume you sent this document?

11 MR. GLUCKSTERN: Yes. I will attest to that. It
12 was sent by Certified Mail.

13 I would let this document speak for itself in the
14 record, but would direct the Hearing Officer's attention upon
15 review of the evidence following this procedure to the third
16 page of this document which, again, sets forth the good faith
17 efforts that E.P.A. made to provide every possible assistance
18 to the Respondent to have a compliant S.P.C.C. plan created
19 and to expedite the implementation of such a plan.

20 Q Now, while you were at the facility on May 23rd, 1980
21 did you have occasion to take photographs of the facility?

22 A The subsequent visit was arranged on May 23, 1980
23 as a result of Exhibit 10 in which I met with Mr. Lecarreux
24 and Mr. McCracken and I did take photographs at that visit.

25 Q And that constituted your third visit to the facility?

1 Is that right?

2 A Fourth visit - - at least the fourth visit.

3 Q Did you notice during this May 23, 1980 visit - -

4 had implementation of a proper S.P.C.C. plan been accomplished
5 at this time?

6 A No, it had not.

7 Q I'd like this marked E.P.A. 11 for identification.

8 (E.P.A. Exhibit No. 11 was
9 marked for identification)

10 Mr. Polito, I show you a memorandum dated June 25,
11 1980 from you to Henry Gluckstern and attached five pages, each
12 containing two color photographs and I ask you whether these
13 photographs are photographs that you took at the Duane Marine
14 Facility on May 23, 1980?

15 A Yes, they were.

16 Q Could you turn your attention to photograph A, Mr.
17 Polito, and describe what that photograph depicts and how it
18 relates to the Spill Prevention Regulations?

19 A Yes. Any vessel used to store, process, treat, et
20 cetera, oil must contain secondary containment. I show here
21 the entrance gate to the facility showing one of the large oil/
22 water separators in the lower left-hand corner. What I'm show-
23 ing is the lack of secondary containment of the vessel which is
24 on the extreme left side - - the white - - you see a white corner,

and then you see a gate to the facility. Outside this gate
the land almost immediately slopes down to the waters of the
Arthur Kill.

Q. Can you identify the object to the right of and in
front of the gate?

A. No, I cannot.

Q. Can you proceed to photograph B and describe what
that photograph depicts?

A. Yes. In photograph A, I referred to an oil/water
separator and it is shown at the extreme left of the photo-
graph as a kind of angled white object. As you step back,
Photograph B shows these objects.

Q. How many oil/water separators are depicted in photo-
graph B?

A. Two.

Q. Do you know what their capacity is?

A. No, I do not.

Q. Are you familiar with the use of oil/water sepa-
tors in oil storage facilities?

A. Some, yes.

Q. Would you characterize these are large oil/water
separators?

A. No, I would not.

Q. Would you turn your attention to photograph C, and

1 describe the items depicted in that photograph?

2
3 A Well, this item is just -- it shows the location
4 behind the large diked area which contained the 250,000 gallon
5 tank. I show on the extreme right a tank truck and the way
6 that tank truck hangs over the edge of -- near the edge of
7 the embankment which separates the upper part of the facility
8 from the lower part of the facility with no secondary contain-
9 ment. The curbing there is of low dimension. Then, to the
10 center of the left of the photograph, I show the storage or
11 tank trucks that were at one time filled with oil.

12 Q How many tank trucks are depicted in that central
13 portion of the photograph?

14 A I see at least four. I see the red one to the right
15 center of the photograph; I see in the center another red one
16 identified to the left of the one which I just identified --
17 to the left center; and in the foreground of the picture, I
18 see a white one, and attached to the cab in back of that center
19 left I see another one.

20 Q Are any of these tank trucks provided with secondary
21 containment?

22 A No, they are not.

23 Q Are any of these tank trucks, to the best of your
24 knowledge based on your visits and your conversations with
25 Mr. LeCarreux, are any of these engaged in transportation

1 related operations?

2
3 A Mr. Lecarreaux did not say they were engaged in
4 transportation related, although a part of it could conceiv-
5 ably have been. The point is if they were, he stored them at
6 the facility -- he didn't make them totally transportation
7 related -- he also made them storage related.

8 Q Or non-transportation related?

9 A He made them non-transportation related in addition
10 to being-transportation related.

11 Q Now I direct your attention to the left of the
12 group of tank trucks in the center of the photograph -- you'll
13 notice a green object -- a dumpster -- is that correct?

14 A Yes.

15 Q And immediately above and to the left of that is a
16 small triangle -- directly below the edge of the tree depicted
17 in the photograph and to the left of the dumpster. Can you
18 identify what that depicts?

19 A I can't find the small triangle you're referring to.
20 Mr. Gluckstern.

21 Q May the record reflect that I am indicating the area
22 I'm questioning about to the witness.

23 A Okay.

24 Q Is this area in fact the Arthur Kill?

25 A I cannot from my observation of the photograph iden-

1
2 tify that as the Arthur Kill, but if we go down to photograph
3 D, I think we can see the Arthur Kill.

4 Q But looking at photograph G, isn't it true that the
5 Arthur Kill is located to the left -- immediately to the
6 left of the dumpster?

7 A Oh, yes, it is.

8 Q And is there any secondary containment in that area?

9 A No, there's no secondary containment in that area.

10 Q And can you describe the configuration of the
11 terrain in that area?

12 A It slopes immediately down to the Arthur Kill.

13 Q Thank you. Proceeding to photograph D, would you
14 tell us what this photograph depicts?

15 A Yes, we're standing right now alongside of the
16 diked area which contains the green tank in photograph C, but
17 at this time I'm looking toward the Arthur Kill and you can
18 see some oil handling in the foremost part of the picture you
19 can see some oil handling devices that Mr. Lecarreux used.
20 You can see in the background of the picture the Arthur Kill,
21 and you can see a boat on the Arthur Kill.

22 Q Thank you. Would you turn your attention to photo-
23 graph E please and tell us what that depicts?

24 A Yes, this is the truck -- this shows the truck
25 loading/unloading area of the facility. It shows that there

1
2 is no secondary containment of any kind leading out to the
3 street. One would at least expect an entrance hump -- a
4 little mound of concrete that the truck could easily pass
5 over and that would serve as a large area to contain any spill
6 from that tank truck. You'll see it's perfectly flat going
7 out to the street. To the -- just beyond the fence in the
8 picture that is the area which I previously testified to as
9 having been observed of oil sheening out and going right down
10 toward -- left down toward the trees toward the Arthur Kill
11 which would be the left of the picture.

12 In the centermost part of the picture you'll see a
13 water drippings of some kind and a thin line. This is the
14 truck scale and which I've identified as not being recognized
15 in the S.P.C.C. plan.

16 Q Can you identify the blackish objects on the right
17 corner of the photograph?

18 A They were drums.

19 Q Now, turning your attention to photograph F, could
20 you tell us what that depicts?

21 A This is another view of looking toward the entrance
22 of some more oil handling equipment which was on the property
23 of Duane Marine. Nothing was fixed and this would change
24 from day to day what he would have in any particular location.

25 Q Immediately to the left of the truck cab in this

1 photograph there is a round object in the center of the photo-
2 graph. Can you tell me what that is?

3 A It's a type of oil tank -- storage tank.

4 Q And was this tank provided with any secondary con-
5 tainment whatsoever?

6 A No, it was not.

7 Q Directing you to photograph G, would you describe
8 what this depicts?

9 A Yes, this is a view of the facility and I want to
10 show as, if you look to the upper left-hand part of the picture,
11 you'll see the entrance gates and as we move to the entrance
12 gates I am trying to show how the property slopes down a ramp
13 without any secondary containment and this then goes right to
14 the Arthur Kill.

15 Q And photograph H?

16 A Yes, somemore tanks that could be used for storage
17 of oil at the facility without any secondary containment and
18 also another showing of how the ramp moves without secondary
19 containment down to areas which would lead to the Arthur Kill.

20 Q What is shown in photograph I?

21 A In photograph I it shows how Mr. Lecarreux backs up
22 his tank trucks. In this case he has a drum there to contain
23 drippings from the tank, but you see it going over near the
24 edge. If that material shot out of that drum overfilled, it

would fall down right into the -- beyond any type of containment and right out to the Arthur Kill. Also, in the lower right-hand portion -- corner of the picture you'll see that the curbing which I approximate as being one inch high was the only secondary containment -- hardly enough to hold back any spill of oil. This curb should have been a minimum of six inches high.

Q. And finally, photograph 37.

A. Yes, you see Mr. LeCarreux in the left-hand portion of the picture and I'm showing the temporary sand diking which was totally inadequate to contain spills of these rusting and corroding drums shown on the right-hand side of the picture. This area then leads immediately to the Arthur Kill which is beyond the end of the drum storage.

Q. You're an employee of the Hazardous Waste Division at the present time -- is that right?

A. Yes, I am.

Q. You have experience with visiting facilities that store drums?

A. Yes, I have.

Q. Directing your attention to the second row -- the uppermost row of drums in this photograph, if a failure of one or more of those drums were to occur in that second row of drums, would the sandbag curbing below the first row of drums

have any effect as secondary containment?

A No, it would not.

Q Thank you.

(Pause)

Subsequent to your visit to the facility on May 23, 1980 at which time you took the photographs we've just discussed, did you ever receive an S.P.C.C. plan from the facility owner/operator or his professional engineer?

A Yes, I did.

Q Do you know what the date of that S.P.C.C. plan was?

A Yes, I do.

Q What is the date?

A The date is -- it's labeled "Revision July 7, 1980," and I have it in my files a little note from Mr. McCracken -- Ed McCracken, the professional engineer which says, "Mike, for your review -- comments please, Ed -- 7/15/80."

Q I'd like this marked for identification as E.P.A. 12.

(E.P.A. Exhibit No. 12 was

marked for identification)

Are there any Exhibits that have been identified -- I neglected to move Exhibits 9 and 11 into evidence, 9 being a March 12, 1980 letter from Mr. Polito to Mr. Lecarreux, and 11 being the photographs taken by Mr. Polito. I would move them as evidence at this time.

2 MR. BIRMINGHAM: They will be accepted.

3 BY MR. GLUCKSTERN:

4 Q Mr. Polito, let me show you Ex.P.A. 12 for identification
5 and ask you whether you can identify that?

6 A Yes, this is a transmittal from me to Mr. Gluckstern
7 of an S.P.C.C. plan -- a proposed S.P.C.C. plan submitted by
8 Mr. McCracken to me for my review.

9 Q How long after your initial site inspection was this
10 plan submitted?

11 A Approximately one year and two months.

12 Q Does this S.P.C.C. plan in your professional opinion
13 meet the requirements of 40 C.F.R. Part of Section 112.7?

14 A Not completely.

15 Q Could you briefly outline the deficiencies of this
16 plan?

17 A Yes, the major facility -- the deficiency of this
18 plan which does incorporate many of the suggestions which I
19 made, does not identify temporary storage which Mr. Lecarreux
20 uses at his facility.

21 Q Are there any other deficiencies?

22 A Except for a few minor notification deficiencies, the
23 plan would be acceptable as submitted.

24 Q Did you have occasion to speak with Mr. McCracken
25 approximately during the period this plan was submitted?

1 A Yes, I did.

2 Q Did he make any statements to you concerning his
3 disagreement that these various changes had to be incorporated
4 in the plan under Section 112.7?

5 A The only comment he made is, "Mike, I can write an
6 S.P.C.C. Plan, but I can't ensure that the client will imple-
7 ment that plan."

8 Q Well, is it -- answering the question now, is it
9 your statement that he did not dispute any of the recommended
10 changes which he eventually incorporated into this plan?

11 A He never disputed them, no.

12 MR. BIRMINGHAM: Let me interrupt. The only item
13 of any significance is this note of yours about the temporary
14 storage facilities has not been identified.

15 THE WITNESS: Yes, the other comments in there are
16 my arrows on the page entitled, "S.P.C.C. Plan -- Summary"
17 incorrectly identifies the notification by federal regulations
18 should be made to the National Respond Center, but as long as
19 E.P.A. does get notified, it satisfies all requirements of the
20 regulation and it would be more correct to put the National
21 Respond Center. The number which he identifies 8801 is an
22 incorrect number. As far as the plan -- the notification, the
23 temporary storage is not identified.

24 This plan does revise his previous plan and does

1
2 correct the items that I identified previously as being in-
3 correct.

4 BY MR. GLUCKSTERN:

5 Q Now, you testified earlier that you, as part of
6 your job with E.P.A., have since 1974 had occasion to be
7 exposed to several hundred S.P.C.C. plans and oil storage
8 facilities -- is that correct?

9 A Yes.

10 Q Would you say that during that time you had occasion
11 to perform field investigations or review S.P.C.C. plans for
12 any facilities of the size and complexity of the Duane Marine
13 facility?

14 A Oh, yes.

15 Q And this facility -- do you consider this a very,
16 very large or complex S.P.C.C. problem?

17 A No, it's not a complex problem at all -- it's only
18 a matter of doing what has been advised. For instance, the
19 original S.P.C.C. plan -- and this is in one of the Exhibits
20 -- calls for a six inch curbing around the equipment washdown
21 area. That curbing was never implemented.

22 Q In your opinion, how long would it take to write an
23 S.P.C.C. plan for a facility of this type? Would it take 14
24 months?

25 A With no other work, it would take -- it should take

1
2 no more than eight to sixteen working hours.

3 Q Thank you.

4 A Not starting from scratch -- starting from the Plan
5 I to Plan II.

6 Q Does the Duane Marine facility operate at this time?

7 A I don't know.

8 Q Was the S.P.C.C. plan that you received -- the
9 rewrite plan from Mr. McCracken ever implemented to the best
10 of your knowledge?

11 A Subsequent to the middle of this plan or at the
12 same time or slightly before, there was a massive fire in that
13 area and I was under the assumption that the facility was no
14 longer at that location.

15 Q To the best of your knowledge, if you know, did the
16 incident that occurred at this facility result in a Coast
17 Guard spill emergency response?

18 A Yes, it did.

19 Q Thank you.

20 MR. BIRMINGHAM: You mean the fire caused the Coast
21 Guard response? Is that what you're saying?

22 THE WITNESS: There was a total environmental response.
23 The fire, as I knew, started in an adjacent facility and spread
24 to the Duane Marine Corporation facility and being that it's
25 on the banks of the Arthur Kill, the Coast Guard responded and

2 E.P.A. did respond.

3 MR. BIRMINGHAM: Was there an oil spill as a result
4 of the fire?

5 THE WITNESS: I don't know.

6 BY MR. BIRMINGHAM:

7 Q Have you had any history or any experience yourself
8 with any oil spills from this facility into the Arthur Kill?

9 A Well, yes, in the first visit I told you I saw sheen-
10 ing leaving the facility. The banks of the Arthur Kill are
11 coated with oil and I could not say whether it came from Duane
12 Marine or some other facility, but it was immediately at the
13 foot of this facility.

14 Q Well, maybe I misinterpreted the word "sheen." To
15 me that's a - -

16 A It's a harmful quantity. The regulations speak of
17 harmful quantities and under 40 C.F.R. - - I think it's 110
18 defines a harmful quantity as a sheen - - those quantities
19 which violate a water quality standard or cause an emulsion to
20 be deposited.

21 MR. GLUCKSTEIN: Mr. Polito is not a witness by
22 which I could introduce evidence as to the results of the fire
23 and explosions at the facility, so we'll not treat that at this
24 hearing.

25 MR. BIRMINGHAM: Well, I understand your not making

1
2 an issue on the oil spills. You're complaining about the
3 inadequacy of the S.P.C.C. plan -- the long delay in imple-
4 menting the first inadequate one. Did you finally accept the
5 one that came in?

6 THE WITNESS: No. As I say, I think the fire -- I
7 received this plan on sometime after July 15th. I believe
8 about July 1st or in the area around that time there was a
9 fire --

10 MR. BIRMINGHAM: So, the occasion of the fire made
11 it academic -- is that it?

12 THE WITNESS: That's correct.

13 MR. GLUCKSTEIN: There are other documents that re-
14 flect that the fire occurred on the 7th and 8th of July.

15 Well, that completes your documents which can be
16 sponsored by the witness who's here today. I would like
17 marked for identification, however, documents which I had
18 hoped to sponsor through the witness for Duane Marine, Mr.
19 LeCarreux.

20 I'd like this marked as E.P.A. 13 for identification.

21 (E.P.A. Exhibit No. 13 was

22 marked for identification)

23 And possibly have this entered into the record as a copy of a
24 court document which I cannot attest is a true copy. As I say,
25 I was hoping to do that through one of the signers, Mr. Journick

1
2 who was expected to have been here today. The purpose of
3 having this document in evidence is directed to page three
4 or to paragraph B at the bottom of that page concerning
5 materials which are leaked or spilled from containers at the
6 facility. I would move it in evidence. I don't know how
7 the Hearing Officer will respond to that motion.

8 MR. BERMINGHAM: I will accept it. I am familiar
9 with it as a matter of fact as Mr. Journick's signature is a
10 rather exceptional one and I recognize it as his signature,
11 so I will accept the document as evidence.

12 MR. GLUCKSTERN: And I believe that Exhibit 12 that
13 we've been discussing, the second S.P.C.C. plan, has not yet
14 been moved. I will move it into evidence at this time.

15 MR. BERMINGHAM: It is accepted.

16 MR. GLUCKSTERN: There is one other document to
17 complete the record that I hope to establish in this proceeding
18 and I would like that marked as E.P.A. 14 for identification.
19 I can attest that it is a true copy of a document ad-
20 dressed to me and which I did receive and I wish to sponsor
21 this through Mr. Lecarreux for the purposes of showing by
22 cross-examination of him on the content of the second page of
23 this document, the first full paragraph thereof, that this
24 particular writing demonstrates the familiarity of the Duane
25 Marine president with the types of materials found in an SPC.

Proceedings

45

1 plan and that he was fully familiar with what had to be done
2 at the facility.

3 MR. BIRMINGHAM: I will receive it.

4 MR. GLUCKSTERN: I would move 14 into evidence.

5 (E.P.A. Exhibit No. 14 was
6 marked for identification)

7 As a closing statement, I wish to emphasize E.P.A.'s
8 position in this matter that in light of the failure to have
9 implemented an initial S.P.C.C. plan which the evidence
10 available today in the record that's been compiled shows was
11 first of all prepared late under the sixth month preparation
12 requirements of the regulations and thereafter was not imple-
13 mented and in light of the efforts that E.P.A., both counsel
14 and technical support of E.P.A. had to go through to finally
15 get an S.P.C.C. plan at the facility -- which plan was never
16 in the history of the facility implemented and tangentially,
17 since there is no direct evidence in this proceeding on it
18 in light of the episode -- the fire and explosion episode
19 that did occur and the direct evidence in the record of an
20 oil sheen violating 40 C.F.R. Part 110 requirements, emanating
21 from the facility and entering the Arthur Kill, that a penalty
22 of a minimum \$10,000 is an appropriate penalty and should be
23 upheld by the Hearing Officer in this matter. And we will
24 await the written determination of the Hearing Officer.

1 Proceedings

2 MR. BERNINGHAM: Very good.

3 MR. GLUCKSTERN: Thank you.

4 COURT REPORTER: Are we going off sir?

5 MR. BERNINGHAM: Yes, that's it.

6

7 (Thereupon, at 12:27 p.m., the hearing in the

8 above-entitled matter was closed.)

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1
2 AUTHENTICATION
3

4 THIS IS TO CERTIFY THAT THE ATTACHED PROCEEDINGS
5 BEFORE THE GENERAL SERVICES ADMINISTRATION
6

7 IN THE MATTER OF: The Duane Marine Corporation
8

9 DATE: Monday, July 20, 1981
10

11 DOCKET #: G.H. II-79-66
12

13 PLACE: 126 Federal Plaza, New York, N.Y. Room 437 B
14

15 WERE HELD AS HEREIN APPEARS, AND THAT THIS IS THE
16 ORIGINAL TRANSCRIPT THEREOF FOR THE FILE OF THE
17 DEPARTMENT OR COMMISSION.
18

19 *Claire Walker*
20 (Reporter/Monitor)
21

22 *Janet L. Cattell*
23 (Transcriber)
24
25